BUILDINGS DEPARTMENT ("BD")

Case No. OMB 2003/4277

BD – removal order – delay in enforcing a removal order issued more than 20 years ago – substantiated

The complainant alleged that as BD had not followed up a removal order issued over 20 years ago against the unauthorised building works ("UBWs") at his premises, he believed that the order had been revoked. When the Department sent him another removal order in late 2003, he had difficulty complying with the requirements.

2. The complainant's premises were a cockloft unit, which originally formed a duplex flat with the ground floor unit. The former owner split the duplex flat into separate cockloft and ground floor units and sold them to the complainant's mother and another buyer. The complainant's mother resold the cockloft unit to him in October 2003. The complainant claimed that the entrance to his unit would be blocked if he reinstated the premises in compliance with the removal order.

3. According to BD, between the issue of the order in 1982 and 1986, the Department had been following up the matter. When it was found that the reinstatement works required cooperation between the owners of both units, however, a new superseding order was issued to the two owners in 1984. However, since the issue of the new order up to July 1986, the Department had not been able to reach the complainant's mother. Because of limited resources, the Department had to focus on more dangerous UBWs and thus did not follow up the case. BD also underwent reorganisation in 1987, 1990 and 1991 and work priorities were rearranged. A task force was set up in 2000 to clear the backlog of removal orders. In January 2002, its staff made another visit to the premises to follow up the case.

4. BD explained that staff had tried to visit the cockloft unit several times but could not gain access. They could only leave a contact slip. In case of questions, the complainant should raise an enquiry. If he was worried that compliance with the order would block the entrance to his unit, he should discuss with the owner of the ground floor unit. As the removal order had been registered with the Land Registry, it would not be revoked due to the passage of time.

Our Observations

5. This Office considered BD too tolerant towards owners not complying with removal orders. It failed to take determined action when the owners did not respond. This case could have been concluded much earlier if BD had taken firm action. The case was further delayed because BD had failed to check the accuracy of the new order when the Department issued it to the owner of the ground floor unit and so had to issue superseding ones.

6. On the other hand, owners had the responsibility to comply with removal orders and to ensure the safety of their buildings. The complainant's mother had all along not responded to BD's removal orders, letters and contact slips. When BD took up the case again, the complainant blamed his own non-compliance on the Department's insufficient supervision. This was not reasonable. The complainant or his mother ought to have liaised with BD earlier to discuss a practicable solution and reinstate the premises.

Conclusion and Recommendations

7. This Office considered that BD had delayed in following up the removal order. The complaint was, therefore, substantiated.

8. The Ombudsman recommended that BD:

(a) formulate long-term strategies –

(i) having regard to the heavy backlog and degree of danger of the UBWs involved, set an annual target for clearing outstanding removal orders that have passed the statutory time limit; and

(ii) if the backlog could not be cleared within a short period of time, rationalise those UBWs that pose no imminent danger (by requiring owners to engage authorised persons to submit reports on the safety of their buildings annually and by imposing penalties with annual incremental increase);

(b) take enforcement action and prosecute uncooperative owners who failed to comply with removal orders; and

(c) remind staff to check carefully all removal orders to avoid making mistakes and generating unnecessary work such as issuing superseding orders.

9. BD accepted all our recommendations and undertook to review the clearance of backlog annually.

BUILDINGS DEPARTMENT ("BD"), LANDS DEPARTMENT ("Lands D") AND HOUSING DEPARTMENT ("HD")

Case Nos. OMB 2003/3310 - 3312

BD – complaint handling – (a) failing to handle a complaint properly and to give the complainant a written reply – partially substantiated

Lands D – enforcement action – (b) failing to take enforcement action against an unauthorised *pai fong* on Government land, while accepting its owner's application for a short-term tenancy – unsubstantiated

HD – enforcement action – (c) failing to take enforcement action against the unauthorised *pai fong* – partially substantiated

After purchasing a house in the New Territories, the complainant found that a *pai fong* and a boundary wall adjoining her house were built partly on her land and partly on unleased Government land. She, therefore, complained to BD, Lands D and HD, but was not satisfied with the way they handled her case.

Complaint (a)

2. At first, probably because of insufficient details given by the complainant, BD staff went to inspect a different place. Upon receipt of relevant drawings from her, BD arranged another inspection.

3. The complainant doubted the accuracy of BD's inspection because it involved only a visual inspection of the structures and taking of some photographs. She e-mailed BD several times to enquire about the inspection result, asking also for clarification on who should be responsible for assessing the safety of the structures and for compensation in case of injury, death or damage resulting from collapse of the structures. Nevertheless, BD only replied by telephone that the structures posed "no imminent danger", without addressing the question of compensation.

4. BD explained that visual inspection was its normal practice for assessing the safety of structures. Its staff had told the complainant the result immediately after their site inspection. BD had also informed her via Government's Integrated Call Centre that the structures posed no imminent structural danger. As the method of inspection involved professional judgement, it was outside our jurisdiction.

5. However, this Office considered that there were inadequacies in BD's reply. As the Department had not given the complainant a clear and substantive written reply, she had to make a number of enquiries by e-mail. We understood that the question of compensation involved complicated legal issues. However, BD, rather than being so evasive, should have followed its internal guidelines and replied in writing, stating clearly to the complainant that the issue was outside its jurisdiction and that she should seek legal advice.

6. Complaint (a) was, therefore, partially substantiated.

Complaint (b)

7. The complainant had sent e-mails to the relevant District Lands Office ("DLO") under Lands D to enquire whether the structures were legal and safe. DLO replied that it had never issued any licence for the structures and that her enquiries had been referred to HD's Squatter Control Office ("SCO") to verify whether the number marked on the boundary wall was a squatter control survey number.

8. The owner of the structures ("the owner") subsequently applied to DLO for a short-term tenancy ("STT") for the Government land occupied by the structures. The complainant alleged that DLO had favoured the owner in accepting the application.

9. This Office deemed it acceptable that DLO awaited SCO's confirmation of whether the structures were covered by squatter control survey before considering any further action, otherwise the two departments might act inconsistently.

10. The root of the problem lay in the intrusion of the structures into the complainant's land, which could be resolved only by settlement between the complainant and the owner. However, DLO was responsible only for dealing with the occupation of Government land by the structures. This Office agreed that DLO should take decisive and effective action to regulate such occupation by way of STT. This was in line with Lands D policy and not favouring the owner.

11. Complaint (b) was, therefore, unsubstantiated.

Complaint (c)

12. Lands D told the complainant that it had to wait for SCO's verification of squatter control record whilst SCO said it had to wait for Lands D's assessment of the owner's STT application. As a result, the complainant was very dissatisfied.

13. HD found it technically not feasible to demolish that part of the *pai fong* on Government land as that would affect the remaining part and even the boundary wall on private land. The dispute over the structures on private land should be resolved by settlement between the complainant and the owner. To avoid inconsistency in decision and action between the two departments, SCO needed to wait for Lands D's assessment of the STT application before it could decide on the demolition of that part of the *pai fong* on Government land.

14. This Office considered it reasonable and responsible of HD to wait for Lands D's decision on the STT and action on the structures before considering any demolition action. Nevertheless, HD took three months just to reply that the structures did not have a squatter control survey number. HD explained that its staff had been occupied by other projects whilst the Department itself was being reorganised. This Office believed that there had been inadequacies in HD's staff deployment and supervision, thus adversely affecting SCO's service.

15. Complaint (c) was, therefore, partially substantiated.

Conclusion and Recommendations

16. Overall, this complaint was partially substantiated.

17. This Office recommended that:

(a) BD remind staff to handle enquiries and complaints carefully and to give substantive replies as soon as possible;

(b) Lands D consider approving the STT on the premise that this would not affect appropriate legal action against the structures by the departments and parties concerned;

(c) HD review its staffing, supervision and staff handover arrangements to ensure that no service would be neglected or delayed; and

(d) the complainant resolve the dispute over her private land by legal proceedings.

18. The three departments accepted our recommendations.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (“FEHD”)

Case No. OMB 2003/2020

FEHD – urn graves – (a) failing to adhere to legal requirements to keep a register of urn spaces for public inspection; (b) failing to notify the complainant of the result of his application after more than ten weeks; (c) losing a copy of the complainant’s birth certificate and requiring him to take an oath to affirm his kinship with the deceased; (d) suspected divulgence by its staff of personal data in the complainant’s application; and (e) handling his complaint perfunctorily – partially substantiated

The complainant, noting the urn space next to his late father’s grave in a cemetery had been vacated, intended to apply for that space for his deceased mother. He went to an office of the Cemeteries and Crematoria Section (the “Office”) under FEHD in April and October 2002 for enquiries but was advised verbally that the space was not vacant. As the Office did not keep a register of urn spaces for the cemetery in question, the complainant was unable to check the records himself although he believed the FEHD staff had given him incorrect information. Afterwards, he wrote to ask FEHD about its latest situation. In December 2002, he received a written reply that the space had become vacant and available for application. The complainant followed the Guidance Notes to Application for Used Urn Spaces and completed his application at the Office that month. However, as there was no response by mid-February 2003, he telephoned FEHD and learned that his application was still being processed.

2. In late February 2003, FEHD notified him that his application had been approved and asked him to pay the fees within 14 days. In early March 2003, he went to the Office for the formalities but was told that his file was missing. As he did not bring along his birth certificate that day, the staff asked him to take an oath to affirm his kinship with the deceased. He refused to do so and said he would complain to the management. Next day, he received a call from FEHD that the documents had been found. He was asked to complete the formalities, which he did accordingly.

3. In March 2003, the complainant lodged a complaint with FEHD through the Integrated Call Centre under the Government Secretariat and a newspaper against the staff of the Cemeteries and Crematoria Section for dereliction of duty. In mid-April 2003, he enquired with FEHD by e-mail about the progress of his complaint but had no response. However, the next day, he found FEHD's reply to his complaint in the newspaper. It was not until two weeks later that he received FEHD's written reply. He criticised the Department for disparity in treatment in attaching importance to the media rather than the complainant. Moreover, he held that the Department had failed to give him a satisfactory reply.

4. In late April 2003, when the complainant went to the cemetery to pay respect to his ancestors, a relative living nearby told him that a person of unknown identity had been enquiring whether he had applied for the urn space. The complainant felt surprised and suspected that FEHD staff had divulged his personal information.

Complaint (a)

5. FEHD said there was no legal requirement that a register of graves should be kept in places other than the cemeteries for public inspection. There was, therefore, no impropriety even though the complainant could not check the register of the cemetery in question at the Office.

6. This Office considered that FEHD had already kept a register in that cemetery for public inspection. It was legal and reasonable for the Department not to keep one in the Office as there was no such provision in the Public Cemeteries Regulation. In this light, we considered complaint (a) unsubstantiated.

7. However, in the course of our investigation, we discovered that the Department had not kept a register in all its public cemeteries. FEHD explained that in some remote cemeteries or those where no more burials were accepted, no register was kept for operational reasons and for better use of resources. Nevertheless, the Department had kept those registers in other offices for public inspection in accordance with the relevant legislation. This Office considered that FEHD might have contravened the rules in section 4 of the Public Cemeteries Regulation.

8. As for the allegation that FEHD staff had given him incorrect information when he enquired about the availability of the urn space, FEHD pointed out that there were numerous enquiries each day and it could not possibly take down all of them. Hence, the Department was unable to check why there was an incorrect reply. FEHD suggested that it was neither necessary nor cost-effective to keep a complete written record of all simple verbal enquiries.

9. This Office was of the view that if the complainant's allegation was true, the FEHD staff should be censured. Had there been a written record of the enquiry, it would have helped to identify who should be responsible and also served as concrete evidence.

Complaint (b)

10. FEHD said the delay in processing the complainant's application was due to his missing file. A written apology had been sent to him. The Department had reviewed its despatch procedures. Meanwhile, it would bring up original files to subject officers on schedule to ensure no delay or loss of files.

11. As FEHD had in fact delayed the complainant's application, complaint (b) was substantiated.

Complaint (c)

12. FEHD explained that as the complainant's file could not be located at that time, a separate file was opened to handle his application. Since the copy of his birth certificate submitted was also missing, he was requested to take an oath to affirm his kinship with the deceased. FEHD regarded the action by the staff flexible and practical and would help the complainant. However, the Department was aware of the complainant's dissatisfaction and was willing to issue an apology.

13. This Office noted that FEHD had approved the complainant's application before locating the file and issued a letter requesting him to complete the formalities and to pay the fees in person at the designated office within 14 days. There was no mention in the letter about the missing file or the need for him to take an oath or to bring along his birth certificate. When the complainant went to the Office, however, FEHD staff insisted that he should take an oath or they would not process his application. This Office considered it unreasonable.

14. In view of the above, this Office considered complaint (c) substantiated.

Complaint (d)

15. FEHD stated that the complainant's application had been handled by only one officer and that officer had already resigned. The Department could not comment whether she had divulged information. Furthermore, it had also asked the other staff in that cemetery but they all claimed no knowledge of the application. Our interviews with the staff of that cemetery also could not prove that FEHD staff had unduly divulged the complainant's data.

16. With the lack of independent evidence, this Office considered complaint (d) unsubstantiated.

Complaint (e)

17. FEHD explained that as the complaint involved its staff, they had to investigate whether disciplinary action was necessary. A full reply could, therefore, be given to the complainant only when the study was completed. There was no disparity in treatment.

18. The Ombudsman considered FEHD's explanation about giving its reply to the newspaper well before the complainant far-fetched and unconvincing. Our investigation also revealed that upon

receipt of the complainant's subsequent e-mail enquiry, FEHD did not issue an interim reply according to its guidelines. The Department explained that as the enquiry was related to his earlier complaint, it was not necessary to issue an interim reply within ten days. This Office found that unacceptable because its performance pledge stated clearly that a reply would be issued within ten days. The pledge would not allow any arbitrary discretion by the Department not to reply.

19. This Office further discovered that the Department had not followed its departmental guidelines to issue an interim reply to the complainant when it could not provide a substantive reply within 21 calendar days on the progress of its investigation. Meanwhile, its "substantive" reply to the complainant was too brief, on the excuse that "the documents were missing and could not be located in time" without even mentioning the affirmation incident that the complainant was most unhappy about. That was indeed perfunctory.

20. In view of the above, FEHD did handle the complaint in a perfunctory manner. Complaint (e), therefore, was substantiated.

Conclusion and Recommendations

21. Overall, the complaint was partially substantiated.

22. This Office considered that FEHD should adopt improvement measures to avoid the same mistakes. In this connection, we recommended that FEHD:

(a) seek legal advice as soon as possible to clarify whether there was any contravention of section 4(1) and (3) of the Public Cemeteries Regulation for failing to provide a register at every public cemetery for public inspection;

(b) send the complainant a detailed explanation and an apology in writing for causing dissatisfaction and inconvenience in asking him to take an oath to affirm his kinship with the deceased;

(c) apologise to the complainant for failing to send its reply to him and the newspaper concurrently. It should also instruct staff to reply to complainants and the media simultaneously under similar circumstances;

(d) instruct staff to strictly follow the administrative circulars and performance pledge to duly issue the replies required; and

(e) review its existing practice of not keeping any written record of verbal enquiries and replies and formulate practical record-keeping measures for verification.

23. The Ombudsman was pleased to note that FEHD had learned the lesson, rectified its irregularities and accepted our recommendations for implementation.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2003/2624

FEHD – handling of offence report – delay in handling a reported littering offence resulting in prosecution being time-barred – substantiated

The complainant alleged that in January 2003 she saw a van driver throw a cigarette butt onto the street. She faxed a "Littering From Vehicle - Report Form" to FEHD on the offence.

2. After examining the facts and noting that the alleged driver had got out of his vehicle when throwing the cigarette butt, a Health Inspector ("Inspector A") classified the offence as "littering in public places" actionable under section 4(1) of the Public Cleansing and Prevention of Nuisances Regulation ("Regulation"), instead of "littering from specified vehicles" under section 9A. He checked with the Transport Department ("TD") and was advised on 10 March 2003 that the vehicle owner was a limited company. He wrote to the Companies Registry on 29 April, seven weeks later, and received the registration details of the company on 27 May.

3. On 13 June 2003, FEHD sent a letter to the company asking for the personal particulars of the driver concerned. The company did not respond. On 30 August, Inspector A wrote to notify the complainant that no prosecution could be instituted as the vehicle owner had refused to disclose the driver's identity. He also stated that the case was time-barred from legal action because six months had elapsed since the alleged offence. The complainant was disappointed that FEHD should have treated the matter so casually.

4. Neither section 4(1) nor section 9A of the Regulation requires the registered owner of a vehicle to inform FEHD of the particulars of the driver of his vehicle. If the owner refused to provide such information, the Department could process the case on its own.

5. FEHD did not have any specific guidelines or circulars for staff in conducting enquiries into reports of offences under sections 4(1) and 9A of the Regulation. The Department kept a prosecution record book for monitoring purposes and FEHD officers were expected to take into account the six-month statutory time bar when processing a case. This case suggested an unfortunate disregard by staff for due diligence.

6. Inspector A stated that he had taken two weeks' vacation leave from 10 March to 28 April 2003 with no one taking up his duties in his absence. Then he had a heavier workload because of the outbreak of Severe Acute Respiratory Syndrome. He did not issue any reminders to the registered owner of the vehicle after FEHD's first letter to the owner on 13 June and before the final reply to the complainant in late August. As a result, idle periods adding up to four months had been wasted. We found this most unacceptable for a case with statutory time bar.

7. The Department had failed to meet its performance pledge at the early stage in sending a belated acknowledgement to the complainant on 25 February 2003. It had also failed to inform her at once when the offence became time-barred from prosecution on 29 July. FEHD's handling of this case had been slipshod and inconceivably casual. This complaint was substantiated.

Recommendations

8. The Ombudsman recommended that FEHD:

(a) remind staff to comply with its performance pledge;

(b) brief staff on the interpretation and operation of relevant statutory provisions;

(c) issue specific guidelines or circulars for investigating reports of offences under sections 4(1) and 9A of the Regulation;

(d) stipulate specific time-frame for staff when handling such cases;

(e) deploy suitable staff to take up the duties of colleagues on leave;

(f) tighten the arrangements for monitoring progress of cases under investigation;

(g) seek legal advice on actions FEHD may take if the registered owner of a vehicle fails to disclose information required for consideration of action;

(h) consider, in consultation with the relevant policy bureau, the need for amending the Regulation to make such disclosure mandatory as an aid to investigation;

(i) consider using separate forms for reporting offences under sections 4(1) and 9A of the Regulation;

(j) issue a letter of apology to the complainant; and

(k) review each and every time-barred case to identify the causes for such and to decide on systemic improvement measures.

9. FEHD accepted all of the above recommendations except (h) on the grounds that vehicle owners would generally disclose the identity of the driver so as to relieve their liability. However, this Office considered that there may well be circumstances where a vehicle owner has no liability whatsoever without identifying the driver. As such, the owner would have no incentive to disclose the driver's identity. In this light, a statutory power is necessary for the public authority to require the vehicle owner to supply information for effective investigation of an offence. FEHD should, therefore, reconsider our recommendation (h), and seek relevant legislative amendments to appropriately expand its investigation power. FEHD is seeking legal advice on this.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2003/3037

FEHD – exhumation of remains – impropriety in handling an application for exhumation of remains, resulting in the remains of the complainant's mother being exhumed and cremated by a stranger several years ago and subsequently lost – substantiated

The complainant's mother had passed away in 1964 and her remains were buried in an urn grave cemetery in 1971. The cemetery was at that time under the management of the then Regional Services Department ("RSD") but FEHD took over in January 2000. As part of the grave was damaged, the complainant had it repaired in 1993. She did not know that the remains in the grave had been exhumed.

2. In April 2003, the complainant's father applied to FEHD for exhumation of his late wife's remains for cremation and safekeeping in a columbarium. FEHD then discovered that in 1985, exhumation of the remains had been granted to a Mr A for cremation and the ashes taken away. The Department tried to contact Mr A but to no avail. The whereabouts of the ashes were unknown. In July 2003, FEHD dismantled the grave, without notifying the complainant and her family, to re-sell the space. Greatly dissatisfied, the complainant lodged a complaint with this Office.

3. The complainant further claimed to have spent some $5,000 to restore the grave in 1993 and then some $32,000 for a private niche for the reinterment of her mother's ashes before the incident came to light. She hoped that FEHD would compensate for the loss.

Exhumation Procedures

4. The 1985 Operation Manual of the former RSD required application for removal or exhumation of human remains to be made at its Cemeteries and Crematoria Section ("C & C Section") by completing an application form and enclosing documents to prove the kinship with the deceased. Upon verification and payment of the fees, a permit would be issued to the applicant. In the absence of documentary proof, the applicant should provide a sworn declaration instead. FEHD believed Mr A to have followed the proper procedures and been granted a permit in 1985.

5. Nevertheless, FEHD was unable to confirm whether Mr A had applied as next of kin or on a sworn declaration as a person of proper interest. As such, this Office could not ascertain whether there was any kinship between Mr A and the complainant's deceased mother.

Verification of Applicant's Identify

6. In March 2003, on learning that the remains of the complainant's mother had been exhumed by a stranger, FEHD immediately tried to contact Mr A. A letter, issued to the address provided by Mr A, was returned. On checking with the Land Registry, FEHD learned that the property in question had been sold in 1986. The Department further enquired with the undertaker that carried out the exhumation for Mr A. However, it was so long ago that the records were already destroyed.

Handling of Records

7. FEHD indicated that its C & C Section kept only records of exhumation applications since 1988. Those before that were "nowhere to be found". As we could not check the records on the case, we could not verify FEHD's assumption, i.e. that Mr A ought to have made his application in accordance with the procedures.

8. Set up in January 2000, FEHD took over the functions of the former RSD and Urban Services Department, including the management of cemeteries. It was impossible for FEHD to find out from its records the identity of the RSD staff who had handled the application.

9. This Office noticed that FEHD had taken over all of the former RSD files and records on the cemeteries and crematoria in the New Territories. According to FEHD, it had never destroyed any of them. Nevertheless, FEHD was unable to locate such past records before 1988. This Office noted that the Department had failed to follow departmental guidelines to formulate procedures and timetables for the disposal of inactive records on cemeteries and burials. Inadequacy in its maintenance of files and records was evident.

FEHD's Computer Records

10. This Office noted that much of the data in the Department's computer system was input after the late 1980's and many records did not include the particulars of the applicants who applied to bury the remains. In the absence of full information, this Office could not possibly ascertain whether Mr A had buried someone of the same name in the said urn grave cemetery before 1985. As the computer records contained only the data of those applicants who applied for burials, they would not have Mr A's particulars if he was not the original applicant for the burial.

Arrangements on Removing Grave

11. In March 2003, FEHD received the complaint. Inspection confirmed that the grave was empty and the remains had been exhumed. In early July 2003, the Department dismantled the grave to re-sell the space without notifying the complainant and her family.

12. In general, urn spaces were for permanent burial. However, when the remains were exhumed, the spaces would be recovered and arranged for resale. The Department stressed that since the grave space had been "returned" to the former RSD in 1985, it was listed as "an empty grave" and

became available for reallocation. Its staff only followed the normal practice to dismantle the grave after confirming that it was "empty" in July 2003.

13. This Office, however, considered there to be impropriety on the part of FEHD because the staff had failed to follow the Public Cemeteries Regulation and notify in writing the "next of kin" of the deceased, i.e. the complainant and her family, before dismantling the grave.

Conclusion and Recommendations

14. As the former RSD had delayed in resuming the grave space in question, the complainant and her family could not realise earlier that the remains had been exhumed and so missed the opportunity to trace the whereabouts of the ashes. Furthermore, FEHD's computer records were incomplete and management of the files and records was unsatisfactory. FEHD had also not had regard for the complainant's feelings when it resumed the grave space. The Ombudsman, therefore, considered the complaint substantiated.

15. The Ombudsman recommended that FEHD:

(a) issue a written apology to the complainant for failing to notify her and her family before dismantling the grave;

(b) draw up a timetable for destroying the C & C Section's inactive files and records and ensure that other old files and inactive records were duly and regularly disposed of or destroyed; and

(c) instruct frontline staff to ensure that the burial information input into the computer database was complete and accurate.

16. Generally, The Ombudsman would not intervene in compensation claims as they were not administrative matters and leave legal liability to be resolved in court. However, in this case, the complainant had sought legal advice and tried in vain to claim compensation through the legal channel. She had also indicated that she would not lodge her claim through civil proceedings. As it was due to the impropriety of the Department that the complainant and her family had to suffer from the financial loss, The Ombudsman suggested that FEHD make an appropriate compensation to the complainant.

17. FEHD had accepted and implemented our recommendations.

HIGHWAYS DEPARTMENT ("Hy D"), ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD") AND ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB")

Case Nos. OMB 2003/0313 - 0314; OMB 2003/0994

Hy D, EPD and ETWB – noise barriers – maladministration in installing and removing noise barriers at Tolo Highway – partially substantiated

The complainant alleged that there had been maladministration by Hy D, EPD and ETWB in installing and then removing the noise barriers along Tolo Highway. He considered it a waste of public money to remove the noise barriers when an Environmental Impact Assessment ("EIA") study had already confirmed the need for them. He also considered that as the barriers were too colourful, they could be a hazard to road safety.

Installation and Removal Processes

2. To cope with the increasing traffic, Hy D had proposed widening one section of the Tolo Highway from dual three lanes to dual four lanes. In April 1997, Hy D's consultants completed an EIA study, which confirmed that certain existing and planned developments would thus be affected by noise exceeding the statutory limit. They, therefore, proposed the installation of noise barriers. The planned developments were mainly in the Pak Shek Kok ("PSK") reclamation area and Tai Po Area 39 ("Area 39"). In November 1998, EPD issued an Environmental Permit ("Permit") for the Tolo Highway Widening Project ("the Project"), requiring installation of the noise barriers.

3. In March 1999, Hy D awarded the project contract. As there was no firm schedule for the Area 39 developments, Hy D specified only the foundation work of the noise barriers in the contract while the installation of the upper parts of the noise barriers was included as a "provisional item" only. In September 1999, as there would be no firm development programme for Area 39 before 2004, Hy D confirmed that the "provisional items" would not be carried out.

4. In June 2000, the Town Planning Board proposed to cancel the installation of noise barriers for the PSK developments due to a change in their schedule. In August 2000, an inter-departmental meeting agreed to defer the installation of the noise barriers for Area 39. The Lands Department also agreed to require the developers, as a land sales condition, to take noise mitigation measures in the PSK reclamation area. Hy D cancelled the installation of the noise barriers for PSK after obtaining EPD's approval to vary the Permit conditions. In August 2000, Hy D also sought a variation of the conditions so as to defer the noise barriers works for Area 39.

5. In January 2001, however, EPD told Hy D that a new EIA study and public consultation would be required for the proposed deferment. Hy D estimated that the whole process would take eight months. If the application was rejected after the EIA process, the noise barriers works would fall

behind the schedule stated in the Project contract. There would then be claims from the contractors. Hy D, therefore, decided in March 2001 to install the noise barriers for Area 39.

6. However, some people expressed concern that the noise barriers obstructed road users' view of the harbour and that the need for the barriers was not great because there were only a limited number of residential buildings in the vicinity of some sections of the Highway. In November 2002, ETWB briefed the Panel on Transport of the Legislative Council on the Project and the installation of the noise barriers. The Bureau undertook to review the provision of noise barriers. In January 2003, new guidelines on their provision were formulated and explained to the Panel as well as that on Environmental Affairs.

7. In April 2003, Hy D applied to EPD for a variation of the Permit conditions so as to remove or modify the noise barriers. EPD approved the application in May on condition that the noise barriers be reinstated before the completion of the developments in Area 39 and The Chinese University of Hong Kong. The removal and modification of the noise barriers were generally completed in May 2003.

Observations and Opinions

8. We considered that Hy D could have completed the necessary EIA procedures in time for deferring the installation of the noise barriers and thus avoided their removal and modification, if it had applied for a variation of the Permit conditions in September 1999 when the decision to defer the works was made, instead of in August 2000. The complaint against Hy D was, therefore, partially substantiated.

9. We noted that EPD insisted in January 2001 that Hy D go through the whole EIA procedure if it wished to defer the installation of the noise barriers. However, in April 2003, EPD merely asked for supplementary EIA information without insisting on repeating the whole EIA procedure when Hy D applied for a variation of the conditions. Such inconsistency reflected that EPD had been bureaucratic or over-cautious previously, but was far more accommodating later. If EPD had been more flexible in 2001 towards Hy D's application for deferring the installation of noise barriers, the subsequent removal and modification could have been avoided. The complaint against EPD was, therefore, partially substantiated.

10. As for ETWB, although it had consulted the Panels on Environmental Affairs and on Transport of the Legislative Council and some District Councillors on the removal of the noise barriers, it had not conducted more extensive consultation on the impact of the removal, particularly the inconvenience caused to road users by prolonging the temporary traffic arrangements. We also doubted the magnitude of the "public" concern about the blocking of the harbour view. Furthermore, the new guidelines on the provision of noise barriers should apply to new projects and not retrospectively to current works. Removal of noise barriers already built constituted a waste of public resources. The complaint against ETWB was, therefore, partially substantiated.

Conclusion

11. Overall, the complaint was partially substantiated. The choice of colours for the noise barriers was a professional matter and, therefore, outside our jurisdiction.

Recommendations

12. This Office recommended that ETWB:

(a) review its policy making procedures and develop ways to balance different views;

(b) direct those departments responsible for road projects to coordinate with departments such as EPD for varying the Permit conditions as early as possible if changes to the land use of the areas affected by the noise were expected; and

(c) remind all works departments to allow in works contracts sufficient time for public consultation on adjustments to noise mitigation measures.

13. Hy D fully accepted our findings and recommendations.

14. Although EPD and ETWB did not accept that they should be partly responsible for the matter, The Ombudsman, after considering all the relevant factors, maintained her conclusion and recommendations.

HOME AFFAIRS DEPARTMENT ("HAD")

Case Nos. OMB 2004/0713; OMB 2004/1365

HAD – mailing arrangements – sending each of two complainants five identical letters, thus wasting public resources – substantiated

A District Office ("DO") under HAD consulted local residents on a certain issue. Afterwards, the DO informed the complainants, Mr A and Mr B, of the outcome of the issue by sending them each five identical letters. The complainants considered the DO's arrangements perfunctory and wasteful.

2. In this case, the DO had sent out consultation letters to residents of a building including the complainants. Subsequently, it sent letters to those respondents who had raised an objection, to inform them of the outcome of the issue. As four respondents had supplied Mr A's address as their residential addresses and there was a clerical error by DO staff, Mr A received five such letters. As for Mr B, five respondents had supplied his address as their residential addresses, so he too received five such letters. Moreover, all such letters did not have the addressees' names.

3. We appreciated DO's concern over the need to maintain privacy and to inform each respondent and, therefore, did not consider such individual mailing wasteful. However, the names of the addressees should have been clearly and correctly written on the envelopes.

4. This complaint was, therefore, substantiated.

5. HAD agreed to improve its practice accordingly. It also accepted our recommendations to send written apologies to the complainants and to issue clear guidelines to all DOs to avoid occurrence of similar incidents.

HOME AFFAIRS DEPARTMENT ("HAD"), LANDS DEPARTMENT ("Lands D"), FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD"), HIGHWAYS DEPARTMENT ("Hy D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2004/0673; OMB 2004/0829 - 0830;
OMB 2004/2005 - 2007

HAD – street management – failing to resolve the problem of laundry drying in public places, thus marring the cityscape – unsubstantiated

Lands D, FEHD, LCSD, Hy D and TD – street management – failing to resolve the problem of laundry drying in public places, thus marring the cityscape – substantiated

The complainant walked past a pleasant tree-lined pedestrian link everyday. Regrettably, the beautiful environment was marred by laundry hung on the trees and railings of public staircases. Complaints were lodged with the Housing Department ("HD"), Hy D and FEHD. However, they all said that the problem was "outside their jurisdiction". HAD indicated that the issue had to be tackled jointly by several Government departments. Consequently, a complaint was lodged with this Office.

2. Our investigation covered six Government departments: HAD, FEHD, Lands D, LCSD, Hy D and TD.

3. Lands D, HAD, FEHD, Hy D, TD, the Buildings Department ("BD") and the Police held an inter-departmental meeting in mid-November 2003 to discuss the "grey areas" in street management. Removal of laundry in public places was on the agenda. Representatives reaffirmed that their respective departments were not authorised to deal with this problem. They finally agreed that, pending Hy D obtaining legal advice, they should refer repeated complaints within a particular district to the relevant District Office ("DO") for it to advise the residents against such practice.

Supplementary Information from Departments

4. The local DO wrote to the management offices and owners' corporations of the public housing estate concerned and private residential developments nearby, asking them to deal with the problem. It further convened an inter-departmental meeting in mid-May 2004 ("May meeting"), which was attended by representatives from Lands D, FEHD, LCSD, Hy D and TD (the "five Departments"). DO suggested that warning signs be posted at laundry drying black spots in the district to warn residents before the five Departments took action to remove laundry. Besides drawing up a list of black spots in the district, the DO also designed warning signs for departments to post at black spots within their jurisdiction. HAD considered it more effective for a single department to take action, but none had the proper authority to tackle the problem under existing legislation.

5. Lands D indicated that under the Land (Miscellaneous Provisions) Ordinance, it could remove only structures on unleased Government land. Moreover, offenders must be given at least one day's prior notice. To invoke the legislation and take enforcement action against laundry hung for only a few hours would not be practical. The Department believed that it should adhere to the decision at the May meeting, i.e. to take inter-departmental action against the problem.

6. FEHD explained that laundry hung by the local residents were not rubbish. As they would not cause inconvenience to street-sweepers or obstruct passageways, there was no basis for the Department to invoke the Public Health and Municipal Services Ordinance or the Summary Offences Ordinance and take enforcement action. On the other hand, according to the decision at the May meeting, laundry could be put on the ground by staff of departments concerned and then be treated as rubbish by FEHD staff if their owners did not take them back. FEHD considered that the Government should educate the public, and designated drying areas for laundry be set up within housing estates.

7. LCSD claimed that it was only responsible for the maintenance of plants in the area in question but not authorised to remove laundry hung there. The Department had, following the decisions at the May meeting, put up warning signs there to urge residents not to dry their laundry in public places. The situation had now improved. LCSD indicated that before starting maintenance works on plants, its staff would remove laundry hung on the trees and put them on the ground just next to the trees.

8. Hy D considered that under the Road Traffic (Traffic Control) Regulations, its staff could only take action to remove obstacles when they cause obstructions to road/maintenance works, or when they pose a threat to pedestrians or vehicles. It further pointed out that drying of laundry in public places was a district problem in which facilities under several departments were involved. The issue was thus best dealt with through inter-departmental efforts coordinated by the local DO, lest individual departments had to face alone residents upset by such enforcement action.

9. TD indicated that drying of laundry in public places had nothing to do with transport management and control. The problem, therefore, did not fall within their jurisdiction. Besides, the site in question was some distance from roads and pedestrian crossings. To dry laundry there should not affect the traffic, nor pose a danger to vehicles or pedestrians. TD would normally refer such complaints to the

department responsible for the district concerned. Complaints received from other departments would be assessed from a traffic control perspective to determine whether the safety of road-users had been compromised.

Observations and Opinions

10. DO had written to various parties concerned, convened the May meeting, drawn up a list of black spots and even designed warning signs for other departments to use. It had performed appropriately as a district coordinator and was proactive in coordinating inter-departmental efforts to find solutions to the problem.

11. Lands D had the duty to keep unleased Government land free from illegal occupation. To dry laundry in public places is to occupy Government land for private use and so the Department should take action. Lands D did not do so because of a certain technicality, i.e. at least one day's notice should be given. It had actually dodged its responsibility in solving the problem.

12. Laundry hung in public places marred the cityscape and scenery. FEHD also did not focus sufficiently on the problem. As the Department is already authorised to remove publicity materials, by extension, it should be empowered to remove laundry hung in public places. If necessary, it could consider amending the Public Health and Municipal Services Ordinance.

13. Drying of laundry on trees was not a new issue, but LCSD sidestepped the problem and did not attempt to find a solution.

14. One of the spots of drying of laundry in question was railings of staircases on slopes. It meant that pedestrians could not use the railings as handrails because of the laundry, thus affecting their safety. Hy D did not take enforcement action to remove the laundry.

15. Laundry hung along the pavement would cause obstructions or even danger to vehicles if they ever got blown onto the roads. The problem therefore had a bearing on transport management and control. However, TD, just like other departments, was only concerned with its own perspective, and did not focus on finding a solution from a wider perspective of the Government as a whole.

Conclusion

16. This Office considered that the local DO under HAD had played a proactive role in coordinating inter-departmental efforts to find solutions to the problem. The complaint against HAD, therefore, was unsubstantiated.

17. The five Departments claimed that they had no authority to take action on their own. If so, whence did their authority for joint enforcement action come? This Office was of the view that, actually, none of them was willing to assume the sole responsibility or a leading role in solving the problem. They had procrastinated and failed to take action. Therefore, the complaint against the five Departments was substantiated.

Final Remarks

18. The five Departments were overly concerned that their individual enforcement actions might lead to confrontation with residents and would like DO to take up the responsibility of coordinating joint action. However, inter-departmental action required time for planning and coordination and could only be a stopgap measure, not a long-term solution to the problem. The five Departments should get legal advice with a view to seeking empowerment for them to act within their own jurisdiction against laundry hung in public places. An agreement should be reached within the Administration for a single department to take up a leading role in enforcement action to remove laundry as a matter of routine. This might involve legislative amendment, if needed.

19. This case illustrated clearly the inability or indecision on the part of the departments concerned to resolve the problem. To remedy the lack of effective central coordination, The Ombudsman had requested the Chief Secretary for Administration ("CS") to intervene and to consider authorising a particular department to assume the "lead" responsibility to deal with the problem; the necessity of amending existing legislation to ensure that departments have the necessary legal authority for enforcement actions; as well as to study with HD, HAD and BD the feasibility of designating areas for laundry drying within public housing estates, Home Ownership Scheme estates and private residential developments.

20. In response, CS had directed HAD to conduct a comprehensive review to come up with a solution to the problem.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2003/1765

HD – occupation of common area – allowing its Tenancy Management Office to occupy part of the common areas of a Tenants Purchase Scheme estate – partially substantiated

The Owners' Corporation ("OC") of a Tenants Purchase Scheme ("TPS") estate alleged that HD had occupied part of the common areas of the estate for three years without the owners' consent. The Department had used the site as its Property Management Services Office ("PMSO") for management of the estate and also as its Tenancy Management Office ("TMO") for leasing and sale of the housing units that it owned as developer. The OC considered HD's occupation of the common areas for its TMO to infringe upon the owners' common ownership and demanded HD to explain and compensate the OC at market rate.

2. HD admitted occupation of the site but refused to compensate the OC at market rate. It pointed out that since the site could not be used for commercial purposes, the OC had not suffered any loss of rent as a result of its occupation. It had used the site temporarily because it had no other choice and the TMO was meant to serve both public housing tenants and prospective owners. HD

had not gained any actual benefits. Unless the OC could prove its loss, the Department would not consider compensating the OC.

3. This Office noted that under the Deed of Mutual Covenant (“DMC”), HD as Manager of the estate could authorise Government or any person(s) to occupy any part of the common areas. As such, it was not entirely without legal justification for HD to set up its TMO at the site. However, in so doing, the Department might have restricted or hindered the owners’ common ownership and use of the common areas.

4. The DMC also provided that OC approval was required for the Manager to use the common areas. At the initial stage, the OC had not yet been formed and HD was unable to find an appropriate alternative site for the TMO. As HD was aware that it might have contravened the DMC, it had considered relocating the TMO to its shopping arcade in the estate. However, the relocation plan was subsequently shelved as the Department planned to set up a regional office elsewhere to replace the TMOs in different estates.

5. Our investigation revealed that HD had not made proper forward planning. As a result, it had no choice but to occupy part of the common areas of the estate. Subsequently, it had also failed to relocate the TMO earlier. Moreover, after the OC was formed, the Department had failed to discuss promptly with the OC its continued occupation of the site. It had thus missed the chance to remedy the situation.

6. Nonetheless, the operation of the TMO was open knowledge. Being aware of its existence, the OC should not have allowed the occupation to persist for three years. The OC was, therefore, partly responsible.

7. Overall, this complaint was partially substantiated.

8. This Office recommended that HD issue an apology to the OC for having occupied the common area and make proper accommodation arrangements in future. HD accepted and implemented our recommendations.

9. We also suggested that the OC and HD seek legal advice and consider resolving their dispute through mediation.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/0788

HD – handling of application – delay in handling the complainant's application for a Green Form Certificate and failure to forewarn her so that she could not apply for a Home Assistance Loan in time – partially substantiated

The complainant had applied for public housing and was wait-listed. On 16 July 2003, she submitted an application to HD for a Green Form Certificate ("GFC"), with which she could apply for a Home Assistance Loan ("loan"). According to her, HD staff had told her that a GFC could be issued in a month or so and that the Department would stop allocating public housing to her upon receipt of her GFC application.

2. However, about a week after submitting her GFC application, she was allocated a public housing unit. Two days later, she called the HD office concerned to reject the allocation.

3. In early November, she received her GFC and a supplementary note that the number of loan applications had already exceeded the quota. Applications submitted in or after October would, therefore, be wait-listed. HD staff also told her that should her loan application fail, her GFC would become invalid and no GFC would be reissued. She, therefore, decided to wait and did not apply for a loan. On 26 November 2003, the Hong Kong Housing Authority ("HA") decided to stop accepting new loan applications immediately. The complainant felt aggrieved at losing the chance of securing a loan due to HD's delay in processing her GFC application and failure to forewarn her about over-application for loans or the impending discontinuation of the Loan Scheme.

4. HD explained that it normally would not accept rejection by telephone of public housing allocation. Moreover, it did not have any record of the complainant having called to reject the allocation. Recording of conversations also showed that HD staff had told the complainant that the GFC would be issued in two to three months rather than a month or so. On the other hand, HD's Lettings Unit had actually received the complainant's GFC application on 23 July, but failed to file it in time to stop the public housing allocation. As a result, more than two months had been taken to process the allocation and its rejection, before the GFC was finally issued on 29 October. The whole process had taken more than three months, slightly exceeding the verbal pledge made by HD staff.

5. An HD letter indicating over-application for loans was in fact attached to the GFC to notify applicants. Since such over-application had never occurred before, the HD staff concerned might not know the exact arrangements, in particular the fact that the applicant could seek to extend the GFC validity. There were also no details of such arrangements on the GFC for applicants' information. Otherwise, the complainant could have applied for loan without having to worry about possible invalidation of the GFC.

6. As regards the discontinuation of the Loan Scheme, that was a decision of HA on 26 November. HD could not have notified the complainant in advance.

Conclusion and Recommendations

7. Overall, this complaint was partially substantiated.

8. The Ombudsman recommended that HD:

(a) apologise to the complainant for the delay;

(b) streamline the procedures for processing GFC applications to obviate the need for first completing formalities relating to applicants' rejection of public housing allocation;

(c) review the procedures of the Lettings Unit to ensure expeditious handling of documents;

(d) pick out for priority processing those cases of rejection of public housing allocation where the allocatees have applied for GFCs; and

(e) explain clearly in the GFC the arrangements for extending its validity.

9. HD accepted recommendations (a), (b), (c) and (e), but considered that (d) might delay the processing of other rejection cases. As the number of priority cases under (d) was expected to be small and so too the problem envisaged by HD, The Ombudsman decided to keep (d).

HOUSING DEPARTMENT ("HD")

Case No. OMB 2004/3055

HD – tendering of shops – (a) delay in calling for tenders again for certain shop spaces when the successful tenderers did not execute the leases; and (b) lack of response to the complainant's enquiry – partially substantiated

The complainant tendered for lease of Shops A and B in a housing estate under HD in September 2002 and September 2003 respectively, but in vain. When the successful tenderers failed to execute the leases, HD did not call for tenders again until after more than six months. In May 2004, the complainant again failed in tendering for Shop C. As the shop was not opened after two months, he made enquiries with a Senior Housing Manager ("SHM") of HD, but did not get any reply.

Information provided by HD

2. Under HD's tender system, when a successful tenderer failed to execute the lease, the Department would not consider the other bids in the same tender exercise. Instead, it would call for tenders again later. The process would take about three months.

3. Shop A remained unleased after two tender exercises in September 2002 and January 2003, because of dishonoured cheques from the successful tenderers. The shop was finally leased out by open tender in March 2003.

4. The successful tenderer for Shop B, despite repeated reminders, failed to show up time and again between October and December 2003 for signing the lease. He further requested deferring the lease signing on various excuses. HD eventually had his tender deposit forfeited in late February 2004 and called for tenders again for the shop for a different trade in July 2004. However, the tender exercise was cancelled upon objection from a tenant.

5. As for Shop C, the successful tenderer was found to have breached lease conditions previously and was, therefore, disqualified. Tenders were invited again in late August 2004. The new shop was finally opened in October.

6. The SHM concerned had been transferred to another post shortly after the complainant's enquiry in July 2004, but he had briefed his successor Mr D about the enquiry. Mr D telephoned the complainant in early August 2004 and replied to his two written enquiries.

Observations

Complaint (a)

7. With regard to the problem of dishonoured cheques, this Office considered that HD should ask for tender deposits in the form of cashier's order or cash to eliminate this risk.

8. HD had not strictly enforced the provisions in the General Conditions of Tender ("the Conditions") and had allowed the successful tenderer for Shop B to delay signing the lease. It did not have his tender deposit forfeited until three months later.

9. Its cancellation of the new tender exercise in the face of objection from a tenant showed a lack of careful planning. As a result, the shop was left vacant for a prolonged period.

10. When the successful tenderer for Shop C was disqualified, HD should have awarded the tenderer to the next highest tenderer instead of calling for tenders again.

11. In view of the above, complaint (a) was substantiated.

Complaint (b)

12. The former SHM had briefed Mr D and the latter had responded to the complainant's enquiries verbally and in writing. Complaint (b) was, therefore, unsubstantiated.

Conclusion and Recommendations

13. Overall, this complaint was partially substantiated.

14. This Office recommended that HD:

(a) issue guidelines to staff for strict enforcement of the Conditions regarding forfeiture of tender deposits so as to deter deliberate delays in lease signing;

(b) accept only cashier's orders or cash for payment of tender deposits;

(c) examine the possibility of revising the Conditions to raise the percentage of the tender deposits that could be forfeited and hence, the cost to those who wilfully obstruct the letting of shops;

(d) consider awarding the tender to the next highest tenderer when the successful tenderer is disqualified or fails to take up the lease; and

(e) review the current procedures and revise the work flow to shorten the time for inviting tenders.

15. HD had reservations over recommendation (b), indicating that in normal tender exercises, to enclose cash with the tender document might give rise to disputes and security problems; to ask for cashier's orders would affect the cash flow of tenderers as the process would take time. Nevertheless, the Department would study the feasibility of accepting cashier's orders in instant tender exercises. This Office had no objection.

HOUSING DEPARTMENT ("HD") AND REGISTRATION AND ELECTORAL OFFICE ("REO")

Case Nos. OMB 2003/3252 - 3253

HD – personal data – (a) mishandling the complainant's personal data and providing inaccurate information to REO, rendering her unable to vote in the constituency of her residence in the District Council election – substantiated

REO – electoral records – (b) changing the complainant's constituency in the District Council election without prior notice; and (c) sending an address update notice to the wrong address provided by HD, such that the complainant did not realise her personal data had been changed – substantiated other than alleged

The complainant previously lived with her family in public housing in Kowloon. On marriage in 1999, she moved to the New Territories while her family moved to a Home Ownership Scheme ("HOS") flat in Kowloon. After informing HD to delete her name from the public housing tenants records, she also notified REO to update her residential address. In the 1999/2000 Legislative Council election, she voted in her geographical constituency in the New Territories. However, for the 2003 District Council election, REO changed her electoral address to her family's address at the HOS flat and assigned her to vote in a constituency in Kowloon.

Complaint (a)

2. At REO's request, HD provided to REO changes of particulars of public housing tenants and HOS occupants aged 18 and above each month. After deleting the complainant's name from the

public housing tenants records, HD staff failed to follow the established procedures of passing the photocopies of updated documents to the Home Ownership Centre for action. The Home Ownership Centre, therefore, could not update its records and sent the wrong information to REO, which then assumed the complainant had moved to the HOS flat and so changed her electoral address.

3. HD stressed that the staff concerned was just negligent and did not mean to misinform REO. On learning about the incident, HD deleted the complainant's name from the HOS records, reviewed the relevant procedures and adopted improvement measures.

4. This Office considered HD procedures for deleting the complainant's name from the public housing tenants records inadequate. It also failed to keep a clear record of the changes of particulars of tenants provided to REO each month and so could not check the records.

5. The Ombudsman, therefore, considered complaint (a) substantiated.

Complaints (b) and (c)

6. Upon receipt of the data from HD, REO would check against the electoral records. If an electoral address differed from that provided by HD and no notice of change of address had been received from the elector, REO would assume the address from HD to be the latest. Nevertheless, REO would send two updating of address notices respectively to the existing electoral address and the new address provided by HD before updating its records to ensure that the particulars were accurate and to remind the elector to advise REO of any change of residential address.

7. When the complainant informed REO of her change of address in 2000, REO immediately updated her electoral records. However, REO received HD's information in 2001 indicating that she had moved. REO then sent notices by surface mail to the complainant's addresses at HOS and in New Territories, stating that her electoral address had been changed to the HOS address and she could advise REO of any correction within one month. On receiving no response, REO assumed that the address provided by HD was correct.

8. Meanwhile, the complainant claimed that she had never received any updating of address notice from REO. She considered it improper for REO to change her constituency. On receiving the complaint, REO changed her electoral address back to her address in the New Territories in 2004.

9. As updating of address notices were not sent by registered mail and REO did not keep such records, we could not verify whether REO had really sent out notices. Even if REO had done so to both the new and old addresses, it was questionable whether REO should assume that the complainant actually received them, understood the contents and did not want to respond. We considered that REO should take the initiative to contact the complainant by telephone or other means (such as by fax) before updating her electoral address.

10. In this light, The Ombudsman considered complaints (b) and (c) unsubstantiated. However,

there was maladministration other than that alleged on the part of REO as it had failed to take the initiative to verify the complainant's address.

Conclusion and Recommendations

11. Overall, this case was partially substantiated.

12. To prevent recurrence of similar incidents, The Ombudsman recommended that:

HD

(a) send a written apology to the complainant;

(b) review the existing procedures and implement improvement measures as soon as possible, and consider revising departmental instructions to remind frontline staff to check whether tenants have their names in the HOS records when deleting them from the public housing tenants records, and to inform the Home Ownership Centre promptly within a specified period for follow-up action; and

(c) consider making electronic copies for easy checking when providing changes of particulars of tenants to REO.

REO

(d) review the existing procedures for updating the electoral records and consider revising the content of the updating of address notice. After sending out the notice, unless there was a written confirmation from the elector, REO should not change any elector's personal data (including the electoral address);

(e) study the scope of relevant legislation and consider approaching more public organisations for personal data of electors (especially those living in private buildings) for verification of electoral records. This should avoid any misunderstanding that public housing tenants and HOS occupants were given different treatment; and

(f) enhance publicity programmes, promote the civic awareness of voting in elections, stress that it is the responsibility of electors to update their personal data to ensure accuracy of information in the electoral register, and remind electors that it is an offence to vote in a constituency not corresponding to one's residential address.

13. HD accepted all our recommendations and issued a written apology to the complainant. Meanwhile, it had issued new departmental instructions on the proper procedures for handling deletion of names from the public housing tenants records. HD would also make and keep electronic copies for five years when providing changes of particulars of tenants to REO.

14. REO accepted all our recommendations and revised the content of the updating of address notice. It also undertook to step up publicity at some appropriate time on the importance of updating personal data and to study the possibility of approaching more public organisations for personal data of electors.

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2004/1938

Lands D – handling of application – delay and impropriety in handling the complainant's application for building two New Territories Exempted Houses – substantiated

The complainant was the owner of two lots A and B. In November 1996, he applied to the local District Lands Office ("DLO") under Lands D for approval to build two New Territories Exempted Houses ("NTEHs"). Besides providing DLO with further information, he had inspected the lots with DLO staff and engaged a professional surveyor to set out their boundaries. Despite these efforts and numerous verbal and written reminders, DLO still could not reach a decision by May 2004. The complainant was dissatisfied with the delay.

2. The Land Registry did not have any record that Lot A had a "house" status. The complainant provided documents in December 1997, indicating that Lot A included 0.02 acre of "house" land. He inspected the site again with DLO staff and submitted a proposed layout plan in September 1998.

3. As the proposed NTEHs were both to be within Lot A, it was necessary to transfer 390 square feet of "house" land from Lot B to meet the shortfall. However, under current Lands D policy, the gross floor area of a building lot was not transferable to another. After seeking legal advice, DLO informed the complainant in October 1999 that his proposal would be unacceptable if it was ascertained that the house land on Lot A was only 0.02 acre.

4. In March 2000, on DLO's request, the complainant again submitted a sketch of his proposal. In April, DLO sought legal advice on the development conditions of Lot B, but these could not be ascertained as neither the relevant file nor the land grant conditions of Lot B was available.

5. DLO informed the complainant in December 2002 that his application could not be processed further because the policy did not allow the land exchange and there was local objection to his proposal. DLO later undertook to look into the local objection and keep him informed.

6. In March 2004, the complainant wrote to DLO to complain about slow progress. DLO then found the main case file missing. It had, therefore, to reconstruct the file and failed to ascertain whether the assistance of the District Office ("DO") had ever been enlisted to resolve the local objection according to the normal procedures.

7. Lands D had advised that if the complainant intended to build both NTEHs on Lot A, he ought to apply for a land exchange by surrendering his two lots to Government for re-grant of a new lot.

Observations and Opinions

8. There were obviously delays in DLO's handling of the case. It had waited one year before asking the complainant for evidence on the land status of Lot A and another one-and-a-half years

before seeking legal advice. No significant action had been taken from July 1999 to February 2000 and from May 2000 to December 2002 when it advised the complainant that his application could not be processed further. Six years had elapsed by then.

9. DLO had handled the application in a haphazard manner. It sought legal advice regarding Lot A in July 1999 and then Lot B in April 2000. Had it done so in one go, much time and resources could have been saved.

10. Its loss of the case file also constituted maladministration. Furthermore, DO had no record of having been asked to help resolve the local objection. It would appear, therefore, that DLO had not followed the normal procedures in this case.

Conclusion

11. The Ombudsman, therefore, considered this complaint substantiated.

12. Lands D accepted our recommendations as follows:

(a) to apologise to the complainant;

(b) to expedite the processing of the complainant's case; and

(c) to remind staff to process similar applications carefully and efficiently according to established procedures and of the importance of safe-keeping of files and records.

LANDS DEPARTMENT ("Lands D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2004/0022; OMB 2004/0964

Lands D – land use – leaving a car park site idle – partially substantiated

TD – provision of car park – failing to open the car park to meet public demand – unsubstantiated

The complainant alleged that due to a dispute over land ownership between Government and a group of indigenous villagers, a car park had been left idle for months since its completion in July 2003. He considered that Lands D and TD should have clarified the land ownership before constructing the car park.

2. The car park was, in fact, meant for local villagers and their visitors. Although the Lands Administration Office Instruction ("Instruction") of Lands D provided that it be metered and managed by TD, the villagers strongly objected and applied for a Short Term Tenancy ("STT") of the site at nominal rent instead. Lands D's counter-proposal of an STT at full market rent was endorsed by the District Lands Conference and TD.

3. Lands D had explored the possibility of opening the car park to the public while processing the STT application. However, on the District Office's advice about the villagers' likely reaction, Lands D shelved the idea. To reduce the idling time of the car park, it urged the villagers in June 2004 to form a legal body within three months to manage the car park as lessee of the STT.

4. TD expressed willingness to manage the car park in the interim, but when consulted by Lands D, it showed concern over the possible adverse public reaction when the car park was closed again in future for the villagers' exclusive use under the STT.

Observations and Opinions

5. We found that as the car park was built on Government land, the complainant's allegation of a dispute over the land ownership was unfounded. Nevertheless, the fact that the car park had been left idle since mid-2003 was an open reminder of Government inefficiency in planning and coordination.

6. The villagers' formation of a legal body and Lands D's assessment of market rental for the STT took time. Lands D should have been aware of this and sought TD's cooperation in opening the car park to the public in the interim. It should also have processed the small house applications within the area more efficiently to enable the villagers to move in earlier and use the car park.

7. TD had the capacity to manage the car park and should, therefore, have been more positive over opening it to the public in the interim.

8. Of the two departments, Lands D was the more culpable as it is the Lands Authority and should not have tolerated the idling of the site for so long.

Conclusion and Recommendations

9. The Ombudsman, therefore, considered the complaint against Lands D partially substantiated and that against TD unsubstantiated.

10. The Ombudsman recommended that Lands D:

(a) revise the Instruction to permit greater flexibility in the management of car park, e.g. STT and interim public car parks;

(b) urge the villagers to expedite formation of a legal body for the STT;

(c) prescribe the commencement date of the STT as soon as the processing of small house applications was completed; and

(d) pending operation of the STT, open the car park for public use.

11. The Ombudsman also recommended that TD manage the car park for public use in the interim.

12. As negotiation on the STT terms were in progress and most villagers had accepted the small house grants, The Ombudsman withdrew her recommendations in paragraphs 10 (d) and 11.

LANDS DEPARTMENT ("Lands D"), TREASURY ("Try") AND RATING AND VALUATION DEPARTMENT ("RVD")

Case Nos. OMB 2003/4265; OMB 2004/2575;
OMB 2004/3347

Lands D and RVD – Government rent – failing to revise Government rent upon redevelopment of a land lot and being unfair to the current owners in asking them to pay the rent arrears that should have been paid by the former owners – substantiated

Try – same – unsubstantiated

The Owners' Corporation of Building A complained that the land lot where Building A was situated ("the Lot") had undergone two redevelopments in 1978 and 1993, but RVD and Try had not accordingly revised the Government rent then. In 2003, Lands D retrospectively revised the rent and asked the current owners to pay the arrears since September 1978. The complainant considered this unfair to the current owners as part of the arrears should have been paid by the former owners.

2. The lease of the original lot, which included the Lot, had been "renewed" by Government in May 1973 through granting a new lease. Subsequently, the Lot was excised from the original lot in 1977. According to Land Office Circular Memorandum No. 41 ("the Memorandum"), the rent for the Lot as of 1 July 1973 should be the amount specified under the renewed lease (i.e. $82,840 a year) or an amount equal to 3% of the rateable value of the Lot, whichever is the lower. Because of the low rateable value of the Lot at that time, the rent was set at $536 per annum only.

3. In 1978, the Lot underwent its first redevelopment and the rent should have been adjusted to $8,280 yearly. However, Try continued to charge the then owners $536 a year. When the Lot was again redeveloped in 1993 into Building A, the rent should have been revised to $82,840 a year. However, Try still charged the owners $536.

4. In June 2002, RVD discovered the problem. It thus informed Lands D, which had since April 2002 assumed responsibility for collecting Government rent. In July 2003, Lands D sent a demand note to the owners of Building A for payment of rent arrears since September 1978, totalling about $868,420.

5. Before 2002, RVD had mistaken the lease of the Lot as being newly granted and was not aware that the Memorandum applied. Consequently, when the Lot twice underwent redevelopment, RVD did not follow Government instructions to notify Try of the new rateable value. Try thus did not demand a new rent based on the new valuation.

6. Lands D had a duty to notify RVD of new buildings for assessing their rateable value. However, it did not alert RVD in 1993 of the need to reassess the newly constructed Building A. Notwithstanding this, Lands D considered it its right and duty to recover any rent arrears.

Observations and Conclusion

7. There was maladministration on the part of Lands D and RVD, as neither had followed the established procedures applicable to the Lot. The complaint against the two departments was, therefore, substantiated.

8. Though Try was formerly responsible for collecting Government rent from owners on behalf of Lands D, it had not been notified by RVD of the new rateable value of the Lot and, therefore, was not aware of the need to revise the rent. Hence, the complaint against Try was unsubstantiated.

9. Overall, this complaint was partially substantiated.

Recommendations

10. Whether the current owners of Building A were liable for the rent arrears involved interpretation of the lease conditions and legal opinion, so this Office would not comment. The complainant should seek legal advice to clarify its legal responsibility.

11. The Ombudsman recommended that:

(a) Lands D step up publicity to remind prospective buyers to check before acquiring a property whether there was Government rent in arrears; and

(b) Lands D and RVD revise their departmental guidelines to set out clearly the division of duties and the procedures for the assessment of Government rent for new buildings.

12. The recommendations were accepted and implemented.

LEGAL AID DEPARTMENT (“LAD”)

Case No. OMB 2004/0995

LAD – legal aid application – staff negligence in failing to send letters to the complainant’s correspondence address – substantiated

The complainant had applied to LAD for legal aid for her divorce case. To prevent her husband from learning of her application, the complainant gave her elder brother’s address (“Address C1”) as her “correspondence address” and entered her current residential address with her husband (“Address R”) in the “residential address” column of the application form.

2. Later, the complainant wrote to LAD to change her correspondence address to Address C2. She further telephoned the Department to confirm receipt of her letter. About a month later, she enquired with the Department on the progress of her application and was informed that a letter had been issued rejecting her application. However, she did not receive that letter and so asked the staff

to send it to her again. Subsequently, she discovered that the letter had been sent to Address R. She telephoned to query the Department for failing to send the letter to Address C2. Nevertheless, the staff replied that it did not matter as her husband would sooner or later know.

Response from LAD

3. LAD explained that in general, an applicant for legal aid would be required to fill out an application form. Its staff would make a photocopy of the front page of the completed form for inputting the applicant's personal particulars into the computer. Meanwhile, the original form would be given to a law clerk for taking the applicant's statement.

4. When the complainant submitted her application form, she had provided only the residential address shared with her husband ("Address R"). LAD staff photocopied the front page and input her personal particulars and Address R into the computer and the original was passed to a law clerk for her statement. While making the statement, the complainant offered her elder brother's address ("Address C1") as her "correspondence address".

5. The law clerk stated that when the complainant gave Address C1 as her "correspondence address" in the application form, he immediately photocopied the front page again and passed it to a colleague for follow-up action. However, there were two staff members present that day and he could not recall to whom he had given the information. The staff on duty that day also could not remember.

6. According to LAD records, the complainant had indeed provided different correspondence addresses but the Department had failed to update its records. When the complainant telephoned to enquire about progress, it then realised the omission. There and then, staff input the new address into the computer and sent the rejection letter to Address C2.

7. As for the allegation against the staff who answered her query, LAD believed that it could have been due to some misunderstanding in communication. The staff concerned was only trying to explain the legal proceedings and not commenting on her application. In this connection, the Department apologised to the complainant for any distress caused.

Observations and Comments

8. The law clerk was negligent in failing to ensure that the complainant's correspondence address was input into the computer. Although he claimed to have passed the data to colleague, he could not identify the staff concerned. This Office, therefore, could not accept his defence. It was obviously due to the negligence of LAD staff that the Department had repeatedly failed to update the complainant's correspondence address.

9. As for the complainant's allegation against the staff who answered her query, this Office accepted the Department's explanation.

Conclusion and Recommendation

10. The Ombudsman considered this complaint substantiated.

11. The Director of Legal Aid accepted our recommendation to issue a written apology to the complainant.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2003/3067

LCSD – enforcement action – misuse of authority and perfunctory conduct of subsequent investigation – partially substantiated

The complainant and his family went to a park to celebrate the Mid-Autumn Festival. They lit some candles in a moon-cake container for about half an hour. An LCSD special patrol team came and gave them a verbal warning against burning wax. A row then ensued and the LCSD staff called the police for assistance. When the complainant and his family were leaving the park, two team members followed them. Suddenly, allegedly one of the team members lay on the ground, claiming to have been assaulted and injured. The police arrived and tried to mediate. The team leader asked the team member who claimed to have been injured not to pursue the case and the police let the complainant and his family go.

2. Alleging that the staff concerned had misused their authority, the complainant filed a complaint to the Home Affairs Bureau, a Legislative Councillor, a radio programme and LCSD, copying his letter to this Office. On completion of its investigation, LCSD sent a written reply to the complainant but he was not satisfied. He considered that the Department had handled his complaint perfunctorily without an in-depth investigation. He, therefore, lodged a complaint with this Office.

Response from LCSD

3. LCSD explained that during the Mid-Autumn Festival, special patrol teams were deployed in various districts to step up enforcement action in its parks and urge people to refrain from "wax burning" to ensure a safe and clean environment and to prevent injuries to visitors and damage to public property.

4. On the evening of the incident, a patrol team found the complainant and his family burning some ten candles in a metal tin, some of them having melted. To prevent an accident, the team leader advised the complainant to dispose of the molten wax in the tin. He had no intention to press charges. The complainant resisted the advice, was uncooperative and suggested the team to call the police, which the team leader did. The complainant and his family then quickly packed up and left the scene. Two team members followed them and asked them to wait for the police. However, the complainant refused to comply. The team leader ordered his staff to stop following them but they

failed to get the instruction. They then collided with the complainant and his wife and one of the team members fell and was injured. As the team member only had a minor scratch, with his consent and through mediation by the police, both parties agreed to settle the dispute and the complainant would not be charged.

5. The complainant subsequently lodged a complaint with LCSD demanding an apology from the injured team member and a statement from the team leader that the injury had nothing to do with his wife. After an investigation, the Department considered that both parties had already agreed not to pursue the case in the presence of the police. Meanwhile, there was no justification for the staff to extend an apology to the complainant or make the above statement.

6. LCSD indicated that it had issued guidelines to staff on the proper procedures to handle and report any staff casualties in the course of duty. As the team leader thought the member only had a minor injury, he had chosen not to report it in accordance with the guidelines. Nevertheless, to prevent recurrence of similar incidents, the Department had stepped up its instructions to its staff, urging them to remain calm and restrained in their enforcement action to avoid any confrontation. It would also brief its staff and issue relevant guidelines on the appropriate ways to handle difficult offenders and confrontational situations.

Observations and Opinions

7. This Office considered that LCSD staff had believed, on the basis of their professional knowledge and experience, the complainant's act might be hazardous and advised him accordingly. The complainant should have accepted the advice and stopped burning wax. All citizens should obey the law and cooperate with law enforcement officers.

8. In our view, LCSD staff had acted too hastily in calling the police for assistance when challenged by the complainant. When the team leader tried to persuade the complainant to wait for the police but to no avail, he ordered his staff not to follow the complainant. However, some members failed to get the instruction in time and they continued their pursuit. This Office queried whether it was necessary for the patrol team to adopt such actions. Meanwhile, the team also showed a lack of coordination.

9. This Office believed that the team leader had meant well in deciding not to pursue the case. However, we doubted whether that was appropriate. We considered that when one of his team members claimed to be injured, the team leader should have sent him to hospital for treatment immediately while anyone suspected of assault should be handed over to the police.

Conclusion and Recommendations

10. Although LCSD staff had not misused their authority, there was clearly inadequacy in handling the incident. Moreover, the team leader had failed to report to the Department the staff injury in the course of duty in accordance with administrative circular. He was, therefore, suspected of dereliction of duty.

11. As LCSD had conducted an investigation upon receipt of the enquiries and complaint and explained the result of the investigation to the complainant, the Department had not handled the complaint perfunctorily.

12. Overall, the complaint was partially substantiated.

13. This Office recommended that LCSD:

(a) issue a circular as soon as possible directing its supervisory staff/officers-in-charge to provide appropriate medical assistance to any staff who was assaulted and sustained injury while on duty; and send the staff to hospital for treatment when necessary or at the staff's request. The supervisory staff/officers-in-charge should report any accidents to the Department in accordance with the relevant administrative circular;

(b) review its existing guidelines to improve staff communication and coordination in enforcement actions, increase their efficiency and draw up criteria for and detailed notes on issuing "verbal advice/warning" or instituting prosecution against offenders;

(c) enhance its existing training programmes to allow its staff to learn the proper law enforcement procedures and knowledge; and

(d) consider follow-up action regarding the team leader's failure to report the staff injury in the course of duty.

14. LCSD accepted and implemented all our recommendations.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2004/1928

LCSD – library services – unreasonable regulations on overdue fines for library materials borrowed – unsubstantiated

The complainant borrowed two books and three accompanying CD-ROMs from a LCSD public library and returned them four days after the due date. He believed that he would need to pay a fine of $12 only since the overdue fine was $1.5 per book per day. However, the library staff asked him to pay $30 since the three CD-ROMs attracted fines as well.

2. The complainant considered it unreasonable to treat the books and their accompanying CD-ROMs as separate items, because readers were only allowed to borrow a maximum of six items at any one time. Should an item contain accompanying CD-ROMs and the borrower take six items with some containing CD-ROMs, this would then exceed the prescribed limit.

3. According to LCSD, the leaflet entitled "Library Materials Lending Services" ("the Lending

Services leaflet") published by public libraries stated that readers could borrow a maximum of six items of library materials. Accompanying library materials would not be counted as a lending item. In the case of the complainant, the two books and three accompanying CD-ROMs would count only as two items on loan.

4. Nevertheless, to prevent readers from returning only the main items but delaying the return of accompanying materials or even not returning them, an overdue fine would also be charged on each accompanying library material as of 15 March 2003. For materials borrowed from the adult lending library, the overdue fine is $1.5 per item per day as stated in the Lending Services leaflet that "the penalty applies to all library materials including books... CD-ROMs and accompanying library materials". Consequently, the complainant had to pay the fines for the two books and the three accompanying CD-ROMs.

5. The librarian concerned indicated that the complainant had admitted to having received a leaflet about the new regulations on overdue fines. When he borrowed the accompanying materials, the library staff had also so informed him. However, the complainant denied having received the leaflet or being forewarned. In the absence of independent evidence, this Office could not ascertain if he was aware how overdue fines would be calculated.

6. On the other hand, although the Lending Services leaflet did not explain clearly that accompanying library materials were not included in the maximum number of lending items, the method of calculation of overdue fines was explicitly set out in the leaflet and the LCSD website. It was, therefore, reasonable for LCSD to demand payment of an overdue fine for the accompanying materials. As a matter of fact, a fine for such materials would not only serve to remind readers to return them on time but also foster a responsible attitude towards borrowed materials.

7. In this light, The Ombudsman considered this complaint unsubstantiated.

8. To avoid misunderstanding, LCSD had since amended the Lending Services leaflet to state clearly that each reader could borrow a maximum of six items of library materials plus their accompanying materials.

OFFICIAL RECEIVER'S OFFICE ("ORO")

Case No. OMB 2004/1177

ORO – handling of offence report – failing to take timely action on the complainant's report against a bankrupt dishonestly borrowing money from him – substantiated

In late 2002, the complainant reported to ORO that Madam A had borrowed some tens of thousands of dollars from him without disclosing her bankrupt status.

2. The complainant then telephoned Case Officer A of ORO many times for progress of investigation. However, each time the reply was “due to manpower shortage and heavy workload, the case was still being processed” or such like.

3. When the complainant called again in March 2004 to enquire about progress, Case Officer B advised that Case Officer A had retired and Madam A had discharged from bankruptcy. He was also advised to make a fresh bankruptcy petition against Madam A if he wanted to continue his claim for the debt.

Observations and Opinions

4. ORO admitted that Case Officer A had retired and that the case file did not contain any record of his investigation. Consequently, the details of the investigation could not be ascertained. This Office believed that Case Officer A had not conducted any thorough investigation.

5. Case Officer A was also found to have failed to follow ORO’s established guidelines and procedures to issue an interim reply to the complainant within ten days or to record progress of investigation. Furthermore, he had not formally addressed the complainant in writing on findings from the investigation. He had not passed the case to the Prosecutions Section lawyers to consider whether to prosecute or briefed his successor on the case before his retirement. It was, therefore, not known whether the investigation had been completed. These features obviously constituted gross maladministration.

6. ORO had no effective monitoring system for handling and overseeing reports of offence. Its internal guidelines were unclear and unable to ensure that all such reports were properly followed up and investigated. This case showed up the deficiencies of the procedures. Even when an informant was dissatisfied with the case officer’s decision and requested a review of a case, there was no system in place in ORO to alert the case officer’s supervisor and/or other senior staff.

7. ORO had procedures for handling general “complaints” (including objection by the informant to the decisions of a case officer) and for senior officers’ checking of the outcome of investigation into complaints. However, if an informant did not know of such procedures and merely expressed dissatisfaction over the findings of an investigation without specifically lodging “a complaint”, then ORO might not handle the case according to its “complaint handling procedures”.

8. The weaknesses identified in this case were reflected also in another complaint against ORO then under investigation. In that other case, an ORO case officer failed repeatedly to respond to the numerous written enquiries from the complainant, without his supervisors being aware at all. This underlined the inadequacies in ORO’s monitoring mechanism.

Conclusion

9. The complaint was substantiated.

Recommendations

10. This Office recommended that the Official Receiver:

(a) formulate guidelines on the classification of “no further action” cases;

(b) draw up guidelines on the supervision of reports and the ways to avoid possible time-barred prosecutions resulting from its staff’s faults; and

(c) remind case officers from time to time to adhere to established guidelines when following up reports and to keep proper records.

SOCIAL WELFARE DEPARTMENT (“SWD”)

Case No. OMB 2004/2042

SWD – handling of fraud report – (a) failing to follow up properly a report of fraudulent rental allowance claims; and (b) poor staff attitude – unsubstantiated

The complainant let her flat to Mr A, who stopped paying rents after eight months. The complainant applied to the Lands Tribunal to recover the rents and won the case. To assist SWD to investigate whether Mr A had made fraudulent claims for rental allowance, she submitted a photocopy of the tenancy agreement. She also requested SWD to give Mr A’s rental allowance to her to cover the outstanding rents, which SWD refused. She, therefore, complained against SWD for failing to take action on her report and continuing to grant to Mr A the rental allowance.

Complaint (a)

2. Upon receipt of the complainant’s report, SWD’s Social Security Field Unit referred the case to the Department’s Fraud Investigation Team (“FIT”) for further action. Before the fraud was substantiated, SWD had to continue paying Mr A the rental allowance.

3. This Office found that SWD had taken prompt action to refer the case to FIT for action. It was also reasonable for SWD staff to have refused to divulge details of the investigation to the complainant because of privacy concern. As regards the recovery of the outstanding rents, that was a civil dispute between the landlord (the complainant) and the tenant (Mr A). SWD had rightly not intervened. The complainant should recover the rents through civil proceedings, certainly not through SWD’s transfer of Mr A’s rental allowance to her.

4. The Ombudsman, therefore, considered complaint (a) unsubstantiated.

Complaint (b)

5. The complainant alleged the attitude of SWD staff to be poor, having kept her waiting in their office for hours. The staff claimed that they had called her name but she had not responded.

6. Though there was no independent evidence to prove that SWD staff had called the complainant, this Office considered it fair and reasonable for them to finish all their appointments first before receiving the complainant who had not made any appointment. There was also insufficient evidence about their attitude. Complaint (b) was, therefore, unsubstantiated.

Conclusion and Recommendations

7. Overall, this case was unsubstantiated.

8. The Ombudsman recommended that SWD remind its frontline staff to be courteous to the public and avoid an antagonistic attitude.

SOCIAL WELFARE DEPARTMENT ("SWD") AND HOUSING DEPARTMENT ("HD")

Case Nos. OMB 2004/2661 - 2662

SWD – timely information to client – (a) staff failure to keep promise to alert complainant before HD's recovery of his public housing unit – unsubstantiated

HD – recovery of public housing unit – (b) staff abuse of authority, removing or taking possession of property in complainant's unit – partially substantiated

The complainant and his family used to live in a public housing unit ("unit"). In March 2004, they moved out without informing HD and rented a private flat. The complainant's wife was then hospitalised and later referred to an Integrated Family Service Centre under SWD ("the Centre"). Her case was taken up by Officer A.

2. The complainant alleged that Officer A had told his wife that before recovering his unit, HD would write to SWD about his situation and that Officer A would then alert him.

3. In June 2004, the complainant learned that HD had thrown away his belongings in the unit except for several electrical appliances awaiting auction to offset the rent in arrears. The complainant alleged that HD staff had removed or taken possession of some valuable items and personal documents in the unit. He also complained that Officer A had failed to keep her word to alert him before recovery of the unit.

Complaint (a)

4. With the Centre's help, the complainant applied for Comprehensive Social Security Assistance ("CSSA"), including rent allowance, and succeeded in May 2004. However, the complainant used the allowance to pay for the rent of his private flat instead. HD was, therefore, not aware that the

complainant was receiving rent allowance from SWD and so would not approach SWD in connection with his non-payment of rent for the unit.

5. Officer A also stated that she had only answered his wife's enquiry on the possible consequences of such non-payment of rent, but had not promised to alert the complainant of HD's recovery of his unit.

6. Furthermore, the complainant had not requested or authorised SWD to liaise with HD on matters relating to the unit. In other words, HD could not have informed SWD or the complainant of its recovery of the unit.

7. This Office could not think of any reason why Officer A should have made the alleged promise. Indeed, the complainant had not fulfilled his obligation to pay rent to HD and to inform it of his moving-out. He had only himself to blame for HD's recovery of the unit without his knowledge.

8. Complaint (a), therefore, was unsubstantiated.

Complaint (b)

9. As rent for the unit had remained outstanding since March 2004, HD issued a Notice of Eviction stating that the tenancy would be terminated on 31 May 2004.

10. On 24 June 2004, after the appeal period had expired, HD's estate office took action to recover the unit.

11. HD claimed that under the Housing Ordinance and the departmental Financial Instructions, HD was empowered to keep valuables such as cash, gold and jewellery found in the course of clearance. A notice should be posted at the front door of the unit, allowing the owner to claim them within seven days. In the absence of claim, the property would be auctioned and the proceeds used to offset the rent in arrears.

12. On the day of recovery, the three Housing Officers ("HOs") present did not find any cash or other valuables except four electrical appliances. They recorded and photographed the appliances. A notice was posted at the front door. They then instructed workers to put the items away in the estate's storeroom. For sanitary considerations, they further directed the workers to dispose of other items in the unit.

13. This Office noted that one of the three HOs had acted as witness. We considered such an arrangement reasonable and sufficient to eliminate the possibility of any property items being disposed of indiscriminately or stolen.

14. The HOs had also followed the departmental instructions in checking for the presence of cash or other valuables before they instructed and supervised the workers to remove the electrical appliances and dispose of useless items. There was no impropriety on the part of the staff concerned.

15. Nevertheless, this Office noted that while section 24(2) of the Housing Ordinance empowers HD to keep any property found and allow the owner to claim any such items within seven days, there was no distinction between "valuables" or "non-valuables". In other words, HD had contravened the Housing Ordinance when it disposed of the complainant's "non-valuables" without allowing him seven days to claim them.

16. We had also examined HD's Financial Instructions and found that they were not clear with regard to the recording and storing of "non-valuables" and their return to the owner when claimed. We believed that the staff concerned had disposed of the complainant's "non-valuables" immediately because of the inadequate guidelines.

17. As regards the complainant's allegation of HD staff having taken possession of his valuables, this amounted to a criminal charge. We, therefore, did not comment.

18. Since HD had disposed of the complainant's "non-valuables" inappropriately, complaint (b) was partially substantiated.

Conclusion and Recommendation

19. Overall, this complaint was partially substantiated.

20. This Office was pleased to note that HD had in September 2004 issued new guidelines to its staff to explain clearly the procedures. However, we considered that HD should review the legality of its new guidelines on immediate disposal of "perishable" goods.

21. HD undertook to do so.

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY ("TELA")

Case Nos. OMB 2004/2582

TELA – complaint handling – delay in processing a complaint and in replying – substantiated

The complainant lodged a telephone complaint with TELA, the executive arm of the Broadcasting Authority ("BA"), in late March 2004 about certain errors made by the host in an episode of a television quiz in late February 2004. TELA sent him an interim reply on 20 April, followed by a substantive reply on 4 June stating that the matter was outside BA's jurisdiction. The complainant was dissatisfied that TELA should have taken so long to reach such a conclusion.

2. TELA claimed that it had met its performance pledge by issuing the interim reply within 15 working days. However, as the complaint appeared to be outside BA's remit, TELA had accorded it low priority in view of its reduced staff strength and increased workload. That was why it had taken 53 working days to inform the complainant.

3. We noted that whilst TELA's interim reply indicated that investigation into the complaint had begun, no investigative action had actually been taken. The absence of accurate details in the interim reply also raised questions on whether it could be considered a "substantive response to complainant on progress or results of investigation" which, according to TELA's performance pledge, should be issued within 15 working days. The substantive reply issued on 4 June far exceeded the target of 15 working days.

4. Besides, it should have been obvious to TELA staff at the outset that the complaint was outside BA's remit. Taking 53 working days just to confirm this fact and inform the complainant was unduly long by any standard.

5. Our investigation also revealed that TELA had reviewed a wrong episode of the quiz though the data provided by the complainant through us were basically correct. This illustrated that TELA staff had handled the complaint and our inquiry in a lax manner.

6. The Ombudsman considered this complaint substantiated.

7. TELA accepted our recommendations as follows:

(a) apologise to the complainant;

(b) remind staff to give accurate information in letters to the public;

(c) set separate target response time for "progress of investigation" and "results of investigation" in its performance pledge;

(d) introduce a mechanism to screen out at an early stage complaints clearly outside BA's remit; and

(e) set a shorter target response time for concluding such complaints.

TRANSPORT DEPARTMENT ("TD") AND HOME AFFAIRS DEPARTMENT ("HAD")

Case Nos. OMB 2003/4239; OMB 2004/0059

TD – ferry service licensing – failing to invite public tender for a new "kaito" ferry service licence – partially substantiated

HAD – public consultation – inadequate public consultation on the new service – unsubstantiated

The complainant was the licence holder for a "kaito" ferry service for an outlying island. In October 2003, he found that TD had issued to a company another licence for a new route between the island and the urban area. He alleged that the departments concerned had not conducted any public consultation or public tender. He also criticised TD for unfair treatment because the new service operated only on weekends and public holidays while he was required to serve a small clientele on weekdays as well.

Complaint (a)

2. Section 28(6) of the Ferry Services Ordinance provides that if it appears that two or more persons are likely to apply for a licence, the Commissioner for Transport shall arrange public tender. However, TD explained that very few people were interested in operating "kaito" ferry services because public demand was not high. Hence, the Department had been rather accommodating in processing applications for such licences and all had been issued without public tender.

3. This Office considered TD too arbitrary in deciding that no one else was interested to apply for the new licence and in thus waiving the public tender requirement. Indeed, TD itself had noticed an increase in demand from tourists for ferry service to the island. It should not have ignored the possibility of other parties being interested. Regarding the allegation that TD required the complainant to operate on both weekdays and pubic holidays while allowing the new service to operate on weekends and public holidays only, it would not be unfair if TD had given the complainant an equal opportunity to bid for the new service through public tender.

4. This Office noted that TD had all along adhered to departmental instructions drawn up in the early 1980s. Nevertheless, the instructions did not mention how to ascertain the need for public tender and how to conduct public consultation. The instructions were obviously outdated.

5. Complaint (a) was, therefore, partially substantiated.

Complaint (b)

6. TD had conducted public consultation through HAD, but had not informed the latter that the new ferry service was meant for tourists. HAD, therefore, had focussed on residents of the island,

and consulted their representatives verbally, instead of presenting the case to the District Council. The residents' representatives, however, failed to inform the complainant, himself a resident.

7. The inadequate public consultation was due to the lack of clarity in TD's instructions to HAD. Complaint (b) against HAD was, therefore, unsubstantiated.

Conclusion and Recommendations

8. Overall, the complaint was partially substantiated.

9. The Ombudsman recommended that TD review and revise as soon as possible its departmental instructions on the public tender requirement and procedures for public consultation. She also recommended that HAD remind staff to be careful about the objectives and scope of consultation when receiving requests for public consultation from other departments.

10. Both departments accepted our conclusion and recommendations.

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2004/1549

WSD – demand for repair cost – failing to reply to written enquiry – substantiated

In December 1998, the complainant, a Government contractor of a District Office ("DO") under the Home Affairs Department, was carrying out drainage improvement works in the vicinity of a damaged water main. WSD suspected the damage to have been caused by the complainant. In March 2000, WSD issued a preliminary demand note to the complainant for repair cost estimated at $20,000. In April, the complainant wrote to WSD denying liability. WSD sought information from DO in May and was advised in June that DO had no record of the complainant having any site activity on the day of damage. Since then, WSD had taken no action to investigate the matter other than an instruction from the engineer concerned for a fresh set of undertaking form to be prepared for demanding payment.

2. Two years later, i.e. May 2002, WSD worked out the actual repair cost to be $23,886.30. Its Expenditure Section was then instructed to demand payment from the complainant. However, by omission attributed by WSD to the absence of a computer routine to alert the staff, no supplementary demand note was issued. Another two years later, WSD discovered this case and issued a demand note to the complainant on 2 April 2004.

3. On 16 April 2004, the complainant wrote to WSD objecting to the demand and requesting a reply. As there was no response from WSD up to 9 May, the complainant lodged a complaint with The Ombudsman.

4. On 21 June, WSD replied to the complainant that it was still considering the case and apologised for the delay in replying. On 30 June, WSD informed the complainant that the demand note had been cancelled after thorough investigation of the matter.

5. WSD admitted the delay in replying but attributed this to a misunderstanding between its Expenditure Section and Regional Staff.

6. The Ombudsman, therefore, found the complaint substantiated.

7. In addition, we observed that WSD had handled this case over an unacceptably long period of almost six years, with one omission or delay after another. We found not only that WSD was remiss in all the delays and omissions identified but that the attitude of its staff towards such matters surprisingly cavalier.

8. We recommended WSD to review its procedures and formulate a system for monitoring timely issue of demand notes.

9. In response, WSD expressed strong reservations on our observations. It contended that the time needed to process a case would depend on complexity of the case and work priorities at the time. Besides, the omission to issue the supplementary demand note was mainly due to limitation of the computer system.

10. As WSD had admitted delays, we did not accept its view that the delays had been mainly due to computer limitations. The Ombudsman considered our observations to be based on facts and saw no ground to alter them.